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...based upon the particular facts surrounding the violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature. Secretary v. Cement Division, National Gypsum Co., 3 FMSHRC 822, 825 (1981).

Under this test, a "significant and substantial" finding turns on whether a reasonable likelihood of harm exists due to the violation. The inspector issued the citations when he observed that the pumps were not housed in fireproof structures with the air currents vented directly into the return. All six pumps were in working order and had energized circuits at the time the condition was cited. The inspector testified that any of the equipment could wear out, motors could fail or short circuit. Events of this nature could happen with electrical equipment after any length of time. He stated that if a pump got hot, it could ignite the coal or any combustible materials around it. He also stated that in his opinion, "even smoke from insulation in the pump, when they fail, could ignite or cause fumes that would be harmful to employees" (Tr. 30).

MSHA Electrical Supervisor Hall also testified as to similar hazards presented by failing to house and vent the pumps.

The Commission emphasized in National Gypsum that the inspector's "independent judgment is an important element in making 'significant and substantial' findings, which should not be circumvented." 3 FMSHRC at 825-826. The inspector's conclusions in this case were based on his observations of unhoused and unvented pumps and the number of employees who would have been affected by fire or smoke moving into the working sections. The inspector made a careful assessment of the conditions he observed and concluded that the hazard was reasonably foreseeable or reasonably likely. I credit his expert opinion on these matters, and find that the violations were "significant and substantial" within the meaning of section 104 (d) of the Act.